

Appln No. 09/650,482
Amdt date March 11, 2008
Reply to Office action of September 11, 2007

REMARKS/ARGUMENTS

Claims 1-27 are pending the present application. Claims 17-27 are objected to because of informalities. Claims 1-10 are rejected under Section 102. Claims 11-27 are rejected under Section 103. Claims 1 and 16-27 are amended.

Applicants thank the Examiner for her courtesy and assistance during a telephone interview on March 6, 2008 and a brief non-substantive conversation on March 11, 2008.

Applicants note with appreciation that 35 U.S.C. §112, second paragraph rejections of the previous Office action are withdrawn.

In the present Office action, claims 17-27 are objected to because of informalities in the preamble. Claims 17-27 have been amended to eliminate these informalities.

Claims 1-10 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,737,539 to Edelson et al. (“Edelson”). It is noted that in the second and third Office actions in this case (March 4, 2004 and December 21, 2004), claims 1-10 were rejected under 35 U.S.C. §103(a) as being obvious over Edelson in view of U.S. Patent No. 5,924,074 to Evans or U.S. Patent No. 5,845,255 to Mayuad. In a telephone interview with the Examiner on July 5, 2005, this rejection, and the nature of the “formulary” discussed in Evans was discussed. Applicants noted in the RCE filed on January 23, 2006 that based on a brief conversation with the Examiner in December 2005, Applicant understood that the previous rejection had been satisfactorily addressed in the July 2005 interview.

However, a rejection based on Edelson has been reinstated. Further, rather than being rejected on the combination of Edelson and other references, claims 1-10 are now rejected under §102 as being anticipated by Edelson. In the prior §103 rejection based on Edelson, the Examiner stated regarding claim 1 that, “Edelson failed to teach, wherein the service center server supplies the pharmacy server at least one of the plurality of formulary records upon request by a pharmacy client system when a order is processed.” Office action dated December 21, 2004, page 3. In the present Office action, though, the Examiner states that this claim element reads on Edelson: “Figs. 6-7 – show downloaded formulary information sent to a local

Appln No. 09/650,482
Amdt date March 11, 2008
Reply to Office action of September 11, 2007

pharmacist as part of drug ordering processing.” Office action dated September 11, 2007, page 3.

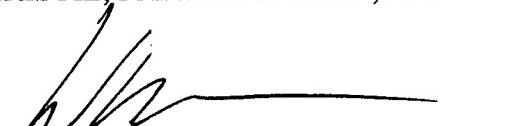
Applicant respectfully traverses this rejection. While Figs. 6 and 7 of Edelson show a screen with a column titled, “Formulary Drugs,” However, Edelson’s use of the word “formulary” is as a specialized term referring to a list of drugs that a medical insurance plan will pay for. Specifically, Edelson states, “As used herein, the term "drug formulary" refers to a list of preferred drugs contained in a drug benefits plan issued by a drugs benefit provider to a given patient.” Edelson, column 1, lines 55-57. The difference between this specialized use of the term “formulary” in Edelson and the use of the term in the present specification and claims was discussed in the telephone interview with the Examiner in July 2005 that resulted in the removal of the original §103 rejection based on Edelson.

Nevertheless, applicants have amended claim 1 to clarify the nature of the claimed “formulary records” to specify that formulary records comprise “chemical composition and properties of each of a plurality of medications.” The clarifying nature of this amendment, as compared to a narrowing nature which it is not, is reflected by the original removal of the §103 rejection based on Edelson in 2005-2006 without such an amendment.

Appln No. 09/650,482
Amdt date March 11, 2008
Reply to Office action of September 11, 2007

With respect to dependent claims 2-27 (claim 16 has been rewritten in this amendment to be in independent form for clarity), it is believed that the rejections are the same as or very similar to the rejections to claims 2-27 contained in the Office action dated March 4, 2004 and applicants response dated September 7, 2004 is incorporated here with respect to these rejections. In particular, throughout applicants' September 7, 2004 response , the proper use of Official Notice and applicants' objection to the use of Official Notice in the March 4, 2004 Office action is addressed. The Examiner's use of Official Notice in the present Office action is improper and traversed for the same reasons set forth in detail in applicants' September 7, 2004 and incorporated herein. If the use of Official Notice is maintained by the Examiner as proper, applicants contest the Official Notice and request that the Examiner present evidence supporting the Official Notice taken.

Respectfully submitted,
CHRISTIE, PARKER & HALE, LLP

By 
Wesley W. Monroe
Reg. No. 39,778
626/795-9900

WWM/asl

ASL PAS783755.1-*03/11/08 6:57 PM